



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201539036

JUN 30 2015

U.I.L 402.08-00

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XXXXXXXXXXXXXXXXXX

T: EP: RAIT2

Legend:

Taxpayer A               = XXXXXXXXXXXXX  
Plan X                    = XXXXXXXXXXXXX  
Bank B                   = XXXXXXXXXXXXX  
Amount D                = XXXXXXXXXXXXX  
Date 1                    = XXXXXXXXXXXXX  
Date 2                    = XXXXXXXXXXXXX  
Date 3                    = XXXXXXXXXXXXX  
Date 4                    = XXXXXXXXXXXXX

Dear xxxxxxxx:

This letter is in response to your request dated January 31, 2015, as supplemented by correspondence dated May 5, 2015, May 7, 2015, and May 19, 2015, submitted on your behalf by your authorized representative, in which you request a waiver of the 60- day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A received a distribution of Amount D from Plan X on Date 3. Taxpayer A asserts that her failure to accomplish a rollover of Amount D within the 60-day

period prescribed by section 402(c)(3) of the Code was due to her medical condition.

Taxpayer A was a participant in Plan X. Taxpayer A represents that she was first diagnosed with cancer in 2003. On Date 1, Taxpayer A was advised by her doctor that her test showed a recurrence and spreading of the cancer, which was originally treated in 2003. Taxpayer A further represents that recurrence and spreading of the disease required aggressive and frequent treatment.

Although, Taxpayer A had no plans to retire, she concluded early in the treatment program that she would not have the physical or mental strength to continue in her employment. Accordingly, on Date 2, she resigned from her employment and retired. At the time of retirement, Taxpayer A elected a partial lump sum payment, an option provided by Plan X, so that she could have some contingency cash available for her medical expenses.

Taxpayer A represents that she sought advice about getting a lump sum payment from Plan X's benefit counselor, but he did not advise Taxpayer A about the tax consequences of the distribution.

Taxpayer A was stressed and distracted by the very serious concerns for her health at the time she received the distribution from Plan X and did not understand the 60-day rollover requirement. It was only on Date 4, when Taxpayer A's father passed away and she discussed the distribution from Plan X with her brother who told her about the 60-day rollover period. Taxpayer A requests a waiver of Amount D and represents that Amount D has not been used for any other purpose and remains in her account with Bank B.

Medical document from Taxpayer A's doctor shows that Taxpayer A had been treated for her medical condition prior to and during the 60-day rollover period.

Based on the foregoing facts and representations, you request that the Internal Revenue Service (Service) waive the 60-day rollover requirement contained in section 402(c) (3) of the Code with respect to Amount D.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be included in gross income for the taxable year in which paid.

Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover within the 60-day period was due to her medical condition.

Therefore, pursuant to section 402(c)(3) of the Code , the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount D into a rollover IRA. Provided all other requirements of Code section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount D will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file with this office.

If you have any questions concerning this letter, please contact xxxxxxxxxxxxxx, xxxxxxxxxxxxxx, at xxxxxxxxxxxxxx. All correspondence should be addressed to SE:T EP RA:T:2.

Sincerely yours,



Sherri M. Edelman, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose

cc:

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